

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

- against -

ROBERTO ARCE,

MEMORANDUM AND ORDER

16 Cr. 643-2 (NRB)

Defendant.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Defendant Roberto Arce, through his counsel, moves for compassionate release from FCI Jesup, where he has more than 74 months remaining of his 120-month sentence for conspiring to distribute and possess with intent to distribute cocaine. Mr. Arce, who is 44 years old, argues that his heart murmur and chronic bronchitis, in the setting of FCI Jesup during the COVID-19 pandemic, warrant his release.

Mr. Arce moves for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), which permits a court to "reduce a term of imprisonment" if, after considering the factors set forth in 18 U.S.C. § 3553(a), "it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the

Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A).¹ As the proponent of his release, Mr. Arce bears the burden of demonstrating that his release is justified under Section 3582(c)(1)(A). See United States v. Butler, 970 F.2d 1017, 1026 (2d Cir. 1992).

Mr. Arce has wholly failed to establish extraordinary and compelling reasons for his release. Mr. Arce has submitted no medical documentation demonstrating that he suffers from a heart murmur or chronic bronchitis, neither of which were listed in his presentence investigation report, dated July 10, 2018. Even if Mr. Arce, who is only 44 years old, does suffer from those conditions, the CDC has identified neither of them as risk factors for severe illness from COVID-19. See Groups at Higher Risk for Severe Illness, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last updated May 14, 2020). By contrast, the cases on which Mr. Arce relies in his motion, which conveniently fails to state his age, concerned defendants in their sixties and seventies who suffered

¹ Section 3582(c)(1)(A)(i) permits a court to reduce a defendant's sentence only "upon motion of the Director of the Bureau of Prisons" or "upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A). On April 8, 2020, Mr. Arce sent the warden of FCP Jesup an email requesting compassionate release under Section 3582(c)(1)(A). See ECF No. 220, Ex. 4. His motion is thus ripe for resolution as 30 days have elapsed since that date.

from diabetes or heart disease, both of which the CDC has identified as risk factors for serious illness from COVID-19. See id. Moreover, while Mr. Arce acknowledges "that few individuals [at FCI Jesup] have tested positive" for COVID-19, ECF No. 220, Ex. 1 at 12, there are, in fact, no confirmed active cases of COVID-19 there, see COVID-19 Cases, BOP, <https://www.bop.gov/coronavirus/index.jsp> (last visited June 22, 2020).

Even if Mr. Arce could establish extraordinary and compelling reasons for his release, Section 3582(c)(1)(A) requires the Court to consider the factors set forth in 18 U.S.C. § 3553(a), which, for all of the reasons reviewed during his sentencing, strongly counsel against releasing Mr. Arce, who was a manager in, and the occasional leader of, a sophisticated cocaine smuggling and distribution conspiracy that trafficked at least 15 kilograms of cocaine from Puerto Rico to the Bronx.

Mr. Arce's motion for compassionate release is accordingly denied. The Clerk of Court is respectfully directed to terminate the motion pending at ECF No. 220.

SO ORDERED.

Dated: New York, New York
June 23, 2020



NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE